



United States Department of Justice

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May 20, 2022

Honorable Thomas J. McAvoy
Senior U.S. District Judge
Federal Building and U.S. Courthouse
15 Henry Street
Binghamton, New York 13901

Re: *United States v. Jacob Delaney*, 20-CR-00335 (TJM)

Dear Judge McAvoy,

This letter is respectfully submitted in response to appellate defense counsel's letter dated May 16, 2022 (Dkt. No. 116) which seeks to unseal / un-redact all previously sealed / redacted materials filed in support of, and opposition to, the defendant's pre-trial motion to suppress. As the Court is aware, on December 17, 2020 a Protective Order was signed directing that the parties' filings that contained law enforcement sensitive information be filed under seal, and remain sealed until otherwise ordered by the Court. *See* Dkt. No. 38 at ¶ 6.

The law enforcement sensitive information in this case generally falls into one or more of the following categories:

- (i) The name of the Foreign Law Enforcement Agency (FLA) providing information concerning the broader investigation and information specific to the defendant's case;
- (ii) The name of the country where the FLA operates;
- (iii) FLA specific terms;¹
- (iv) The name of the website targeted in this investigation;
- (v) Information provided by the FLA to U.S. law enforcement agencies, including the FBI, relevant to the investigation; and
- (vi) Paperwork provided by the FLA to U.S. law enforcement agencies, including the FBI, relevant to the investigation.

¹ Just as someone who is familiar with U.S. federal law enforcement agencies would recognize a "302" as a report from the FBI, there are certain terms that are unique to the FLA.

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As the Court is also aware, the defendant's pleas of guilty in this case were conditional pleas and permitted him to appeal the Court's prior Decision and Order denying the defendant's motion to suppress. *See* Dkt. No. 67 at ¶ 7. Below is a table of the motions, opposition papers, reply briefs, supporting exhibits, and Court ruling relevant for the defendant's appeal, and the sealing / redaction status, if any, of those filings:

Docket Number	Nature of Filing	Sealing / Redactions
43	Defense Notice of Motion	No Sealing / No Redactions
44	Defense Memorandum of Law in Support of Motion to Suppress	Filing not sealed, but contains select redactions of law enforcement (LE) sensitive information
45	Declaration of Defense Attorney Scott Iseman	Filing not sealed, but contains select redactions of LE sensitive information
45-1	Exhibit A to Defense Motion to Suppress	Filing not sealed, no redactions
45-2	Exhibit G to Defense Motion to Suppress	Filing not sealed, no redactions
45-3	Exhibit H to Defense Motion to Suppress	Filing not sealed, no redactions
46	Exhibit B (Written Materials from the FLA to the FBI discussing both the broader investigation and the investigation specific to the defendant)	Filing sealed in its entirety
	Exhibit C (Charter Communications subscriber information)	Filing sealed in its entirety
	Exhibit D (Agent Diggons' 11/18/2019 FD-1057)	Filing sealed in its entirety
	Exhibit E (Agent Fallon's 12/10/2019 search warrant application for the defendant's residence)	Filing sealed in its entirety
	Exhibit F (search warrant dated 12/10/2019 for the defendant's residence)	Filing sealed in its entirety
	Exhibit I (FD-302 of 12/18/2019 summarizing the 12/12/2019 interviews of the defendant and referencing the targeted website)	Filing sealed in its entirety

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51-1	Government Memorandum of Law in Opposition to Defendant's Motion to Suppress	Filing not sealed, but contains select redactions of LE sensitive information
51-2	Exhibit 1 to Government Opposition (recording of defendant's 12/12/2019 residence interview)	Filing sealed in its entirety
51-3	Exhibit 2 to Government Opposition (recording of defendant's 12/12/2019 Highland Station interview)	Filing sealed in its entirety
51-4	Exhibit 3 to Government Opposition (defendant's 12/12/2019 written <i>Miranda</i> waiver)	Filing sealed in its entirety
51-5	Exhibit 4 to Government Opposition (recording of defendant's 12/12/2019 post polygraph interview)	Filing sealed in its entirety
55	Defense Reply Brief	Filing not sealed, but contains select redactions of law enforcement (LE) sensitive information
65	Decision and Order denying defense motion to suppress	Filing not sealed, but contains select redactions of law enforcement (LE) sensitive information

After further communications with two of the trial attorneys from the Department of Justice's Child Exploitation and Obscenity Section (CEOS) who are familiar with the FLA in this investigation, and who have worked with the FLA on the broader investigation, I have learned that there are no longer reasons to seal Exhibits C and F (see Dkt. No. 46) related to the defendant's motion to suppress, and Exhibit 3 (see Dkt. No. 51-4) related to the government's opposition papers. As such, the government does not object to the aforementioned exhibits being unsealed and publicly filed on the docket.

The government continues to argue that the remaining filings, as described in the table above, should continue to either remain entirely sealed, or filed on the docket, but in their current redacted form. Not only are there ongoing cases being prosecuted / litigated involving the website at issue, but there are ongoing *investigations* of subjects suspected of accessing the website at issue. The unsealing or un-redaction of materials containing law enforcement sensitive information in this case could seriously jeopardize the continuing broader investigation

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and other subjects of the broader investigation. As such, the government respectfully requests that the Court continue to seal / redact the filings and information as described above pursuant to *Lugosch v. Pyramid Co. of Onondaga County*, 435 F.3d 110, 119-27 (2d Cir. 2006).

Thank you.

Sincerely,

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